(211)

UNITED NATIONS

E

Economic and Social Council

Distr.
GENERAL

E/CN.4/1994/7/Add.2
15 November 1993

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS
Fiftieth session
Item 12 of the provisional agenda

QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES:

Extrajudicial, summary or arbitrary executions

Addendum

Report by the Special Rapporteur, Mr. B.W. Ndiaye, on his mission to Peru from 24 May to 2 June 1993

CONTENTS

		Paragraphs	Page
Introduction		1 - 10	3
I.	VIOLATIONS OF THE RIGHT TO LIFE: BACKGROUND AND CONTEXT	11 - 25	4
	A. The decade of the 1980s	11 - 20	4
	B. The Government of President Fujimori	21 - 25	7
II.	VIOLATIONS OF THE RIGHT TO LIFE: THE SPECIAL RAPPORTEUR'S FINDINGS AND CONCERNS	26 - 88	8
	A. A decrease in extrajudicial killings	26 - 30	8
	B. The right to life: issues of concern	31 - 88	9

GE.93-85564 (E)

CONTENTS (continued)

		Paragraphs	Page
III.	CONCLUSIONS AND RECOMMENDATIONS	89 - 129	25
	A. Impunity	94 - 96	26
	B. The civilian justice system	97 - 106	27
	C. Parliamentary commissions of inquiry .	107 - 110	29
	D. The death penalty	111 - 117	30
	E. Civil defence groups	118	31
	F. States of emergency	119 - 120	32

Introduction

1. The Special Rapporteur on extrajudicial, summary or arbitrary executions has, in his reports to the Commission on Human Rights, repeatedly expressed concern at the persistent and serious violations of the right to life in Peru (see, for example, E/CN.4/1989/25, E/CN.4/1990/22, E/CN.4/1991/36, E/CN.4/1992/30, E/CN.4/1993/46). Over the years, the Special Rapporteur has received a large number of allegations from a variety of sources and forwarded them to the Government of Peru with a request for information about the measures taken by the authorities to clarify the facts, identify those responsible and bring them to justice, as well as to provide compensation to the families of the victims. In fact, since he was appointed Special Rapporteur in April 1992, Mr. Bacre Waly Ndiaye has sent to the Government of Peru more than 200 cases of alleged extrajudicial, summary or arbitrary executions reported to have occurred between 1990 and 1993. In more than 40 other cases, he urged the Peruvian authorities to give effective protection to persons allegedly facing death threats. A summary of the cases transmitted in 1992 appears in the Special Rapporteur's report to the Commission on Human Rights at its forty-ninth session (E/CN.4/1993/46, paras. 460-487), together with replies he had received from the Government before 14 December 1992. The cases transmitted in 1993 will be reflected in his report to the Commission on Human Rights at its fiftieth session (E/CN.4/1994/7), along with the Government's replies and the ensuing correspondence.

2. From 24 May to 2 June 1993, the Special Rapporteur carried out a mission to Peru to examine allegations of violations of the right to life in that country. The invitation to do so was first extended by the Government of Peru to his predecessor, Mr. S. Amos Wako, in 1989, and renewed for the present Rapporteur in 1992.

3. He spent six days in Lima and undertook two-day visits to the cities, and surroundings, of Ayacucho and Tarapoto. These areas (the sierra central and the selva central) have been particularly affected by violations of the right to life in the context of violent insurgent and counter-insurgency activities over many years.

4. During his stay in Peru, the Special Rapporteur met with the following government representatives: the Vice-Minister for Foreign Relations; the Minister of Justice and his Vice-Minister; the Director of the National Penitentiary Institute; the Minister of the Interior; the Minister of Defence; the President of the Armed Forces Joint Command as well as high-ranking officials of the army, the navy and the air force and officials dealing with the investigation of alleged human rights abuses within these institutions; the Attorney-General and the Special Attorney for the Defence of the People and Human Rights. In Ayacucho and Tarapoto, the Special Rapporteur met with the political-military commanders as well as the Provincial Prosecutors and the prosecutors in charge of investigating complaints of human rights violations in these areas.

5. The Special Rapporteur also met with several members of Congress as well as members of the previous Congress, who are, or had been, involved in the work of parliamentary commissions of inquiry into various cases of alleged extrajudicial execution imputed to members of the security forces.

6. Meetings were held with representatives of the following non-governmental organizations, most of whom have been cooperating with the Special Rapporteur for many years: the Comisión Andina de Juristas; the Coordinadora Nacional de Derechos Humanos; the Asociación Pro-Derechos Humanos (APRODEH); the (non-governmental) Comisión de Derechos Humanos (COMISEDH); the Instituto de Defensa Legal (IDL); the Comisión Episcopal de Acción Social (CEAS); the Centro de Estudios y Acción para la Paz (CEAPAZ); the Fundación Ecuménica para el Desarrollo y la Paz (FEDEPAZ); the Centro Amazónico de Antropología y Aplicación Práctica; the Consejo por la Paz; the Asociación de Familiares de Desaparecidos in Ayacucho; and the Oficina Prelatural de Acción Social in Tarapoto.

7. In addition, the Special Rapporteur met with the head of the International Committee of the Red Cross delegation to Peru, the Chargé d'affaires ad interim at the Embassy of the United States of America in Lima, as well as with journalists and trade unionists.

8. While in Lima and during his visits to Ayacucho and Tarapoto, the Special Rapporteur met with a number of witnesses to human rights abuses, in particular violations of the right to life, as well as family members of victims. He also received testimony from several persons who reported that they had themselves been subjected to death threats and acts of intimidation or harassment.

9. The Special Rapporteur wishes to thank the Peruvian authorities for their invitation and their cooperation during the mission, particularly with regard to security and full access to all places the Special Rapporteur wanted to visit. The availability and frankness of all civilian and military authorities met were much appreciated. The Special Rapporteur is also most grateful to all non-governmental organizations and individuals who provided him with information on the situation of the right to life in Peru.

10. The present report includes information received until 15 October 1993 which is related to the Special Rapporteur's findings during the mission to Peru. At the time of the finalization of the report, information was received concerning the approval by the Peruvian people of a new Constitution in a referendum on 31 October 1993. This event was taken into account in the report, in particular with regard to extension of the death penalty (see below, paras. 74-78). However, a detailed analysis of the impact of the new Constitution on the right to life, as well as events and developments after 15 October 1993, will be reflected in forthcoming reports to the Commission on Human Rights.

I. VIOLATIONS OF THE RIGHT TO LIFE: BACKGROUND AND CONTEXT

A. The decade of the 1980s

11. Violations of the right to life in Peru have been taking place against the backdrop of more than a decade of armed conflict between government security forces and two armed opposition groups.

12. In May 1980, the Communist Party of Peru "Shining Path" (Partido Comunista del Perú "Sendero Luminoso", hereafter PCP-SL) carried out the

first attack of its campaign directed at overthrowing the Peruvian State and replacing it with a peasant-worker state: electoral registers and ballot boxes were burnt in Chuschi, Ayacucho. This was followed by a series of armed attacks which caused enormous human and material losses. Further acts of violence aimed at impeding municipal, parliamentary and presidential elections throughout the country included the killing of municipal election candidates, mayors and other local or regional state officials as well as armed attacks against police and military posts, roads, bridges and electricity pylons. While in the beginning such attacks took place in rural areas, mainly the departments of Ayacucho, Apurímac and Huancavelica, the PCP-SL has progressively widened its influence and established a presence in other regions, particularly in the zones of the selva used for the cultivation and trafficking of drugs (see below, para. 14). Between 1988 and 1992, the PCP-SL became increasingly active in metropolitan Lima. Terror was spread among the population by several car bomb attacks there, which resulted in a high number of casualties, as well as by killings in the shantytowns of the capital such as the particularly brutal murder of María Elena Moyano, the President of the Women's Popular Federation of Villa El Salvador and an outspoken critic of the PCP-SL, in February 1992.

13. In 1984, a second armed opposition group emerged: the Túpac Amaru Revolutionary Movement (Movimiento Revolucionario Túpac Amaru, hereafter MRTA). Unlike the PCP-SL, the MRTA started its violent activities with attacks in urban centres, particularly Lima, before gaining control of certain rural areas in rain forest valleys of the departments of Junín, Pasco, Huánuco and San Martín. During the late 1980s, the MRTA was said to have lost its control over part of these areas, namely the coca-growing zones in the Alto Huallaga valley, to the PCP-SL. The main leaders of the movement were captured by government forces. Many of its adherents took advantage of a "law of repentance" which allowed for their surrender and reinsertion into civilian life. As a result, the MRTA is widely regarded as having lost its potential to threaten the established order. Several sources have indicated that the number of attacks carried out by the MRTA has decreased sharply during the last year.

14. During the late 1980s, the PCP-SL reportedly managed to establish zones of control in coca-growing areas of the rain forest, and particularly the Alto Huallaga valley. This region is said to have become its principal base, politically, militarily and financially, as the PCP-SL provides protection to drug traffickers in exchange for cash. This symbiotic relationship has strengthened both armed opposition groups and the drug traffickers, who are also said to be implicated in the killing of civilians and members of the security forces.

15. The Governments of Fernando Belaúnde Terry (1980-1985) and Alán García Pérez (1985-1990) responded to the subversive violence with counter-insurgency operations which emphasized military force, including extrajudicial executions and disappearances, as well as occasional "civic" actions such as distribution of food or medical and other services in remote areas or poor Lima neighbourhoods. The aim was to persuade the population not to collaborate with the PCP-SL and the MRTA.

16. Since the attack by the PCP-SL on a police post in Tambo in 1981, large areas of the country have been declared emergency zones by the Government. In December 1982, President Belaúnde Terry decided to entrust the control of these zones to political-military commands, establishing the first such command in Ayacucho. During the following years, several other political-military commands were installed in other areas of the country, at times covering the entire national territory. Law No. 24.150 of 6 June 1985 formally established the responsibility of these commands for maintaining law and order in emergency zones. As of 10 September 1993, these zones cover 30 per cent of the territory, and 51 per cent of the Peruvian population live under state of emergency. It is in zones under a state of emergency, that most of the extrajudicial killings and disappearances attributed to the security forces were reported to have occurred.

17. Peasant self-defence groups (rondas campesinas) were progressively brought under the control of the army and are now an important tool used by the Government in its counter-insurgency strategy. Peasants traditionally formed these groups, particularly in the Andean regions of the department of Cajamarca, to protect their herds against cattle thieves. At a later stage, these groups were introduced by the army in several departments of the rain forest which have a nomadic population. Since the mid-1980s, the authorities have built on this idea to form so-called comités de autodefensa with the sole aim of combating terrorism. Members of the army are said to be active participants.

18. According to data published by the Lima-based non-governmental institute Constitución y Sociedad in its monthly publication PerúPaz, political violence has proliferated throughout most of Peru since the beginning of the armed insurrection and the Government's counter-insurgency operations, causing, until June 1993, the death of more than 28,000 persons. The security forces are said to be responsible for 53 per cent of the killings. Forty-five per cent are attributed to the PCP-SL, 1 per cent to the MRTA. While more than 2,300 members of the security forces and over 12,500 alleged members of the PCP-SL and the MRTA have died in armed confrontations between government forces and armed opposition groups, 13,000 civilians have lost their lives, among them a large number of human rights activists, journalists, academics and students, members of the political opposition, trade unionists, environmental activists, doctors and lawyers. The principal victims of political violence have been peasants and community leaders, many of whom were not participating in the conflict. Numerous cases have been reported in which peasants were targeted by the PCP-SL for suspected collaboration with the military, in particular if they participated in rondas campesinas or comités de autodefensa. It has also been repeatedly reported that the military and peasant self-defence groups, acting either separately or in joint operations, have carried out executions and massacres of peasants whom they believed to be members of the PCP-SL or the MRTA or their sympathizers, or who had refused to participate in civil defence groups (see below, para. 84).

19. Since the early 1980s, the security forces' counter-insurgency tactics are also said to include "disappearances" of suspected terrorists while in custody. By the end of 1992, more than 2,800 such cases had been reported to

the United Nations Working Group on Enforced or Involuntary Disappearances. Over 2,300 of these cases have not yet been clarified. It is feared that many of those who remain "disappeared" have been killed.

20. Several sources suggest that figures for both extrajudicial killings and disappearances may be even higher than the estimates stated here. Precision is impossible due to difficulties of access to emergency zones.

B. The Government of President Fujimori

21. After President Alberto Fujimori assumed office in July 1990, violations of the right to life reportedly continued to follow the pattern observed during preceding administrations until the beginning of 1993. In fact, allegations of extrajudicial executions increased during the first 2 1/2 years of his Government. The Coordinadora Nacional de Derechos Humanos, an umbrella body for non-governmental human rights organizations, reported 82 such cases in 1990, 99 in 1991 and 114 in 1992. On 5 April 1992, President Fujimori suspended the Political Constitution of 1979, dissolved Congress and established a Government of Emergency and National Reconstruction.

22. From 5 April 1992 until 30 December 1992, the President and the Council of Ministers ruled the country through Decree Laws which included wide-ranging anti-terrorism decrees allowing for summary proceedings against persons accused of terrorism and treason (see below, para. 75).

23. Furthermore, the President suspended civilian courts, closed the Public Ministry for 10 working days, removed from office the members of the Tribunal of Constitutional Guarantees and dismissed 13 of the judges attached to the Supreme Court, the members of the Supreme Council of Justice as well as members of the District Councils of Justice. Furthermore, the Attorney-General and approximately 120 judges and public prosecutors in the judicial districts of Lima and Callao were dismissed. Replacements were appointed by the President and the Council of Ministers.

24. An assembly to draft a new Constitution and act as a legislative body was elected on 22 November 1992: the Democratic Constituent Congress (Congreso Constituyente Democrático, hereafter CCD). It was formally inaugurated on 30 December 1992 and consists of a single chamber of 80 members, in which the political alliance Nueva Mayoría-Cambio 90, supporting the President, holds a majority of seats. On 5 January 1993, the CCD approved a law confirming the application of the 1979 Constitution as well as President Fujimori as the Constitutional President of the Republic. The law also provided that all Decree Laws which had been issued by the President and the Council of Ministers would remain in effect until they were revoked or revised by the CCD. Also in January, the CCD established a Commission on Human Rights and Pacification to investigate cases of human rights violations. On 23 February 1993, the CCD approved a motion affirming that the Peruvian State does not have a policy of systematically violating human rights. Furthermore, the motion stated that the CCD was willing to investigate human rights violations.

25. The new Constitution, drafted by a Constitutional Commission of the CCD and approved by Congress in plenary session, was approved by the people of Peru in a referendum on 31 October 1993.

II. VIOLATIONS OF THE RIGHT TO LIFE: THE SPECIAL RAPPORTEUR'S FINDINGS AND CONCERNS

A. A decrease in extrajudicial killings

26. Governmental and non-governmental sources agree that the number of extrajudicial, summary or arbitrary executions committed by members of the security forces decreased during the first half of 1993, as did the number of enforced or involuntary disappearances. During this period, the Coordinadora Nacional de Derechos Humanos registered 19 cases of alleged extrajudicial executions and 19 cases of disappearances that have not yet been clarified. This is a dramatic fall when it is recalled that during the first six months of 1992, the same source reported 74 cases of alleged extrajudicial executions and 126 disappearances. However, according to provisional figures provided by the Coordinadora Nacional de Derechos Humanos, by September 1993 these figures had increased to 35 extrajudicial executions and 61 cases of disappearances.

27. This decrease can partly be explained by a change in the counter-insurgency strategy of the military. On repeated occasions, President Fujimori has referred to the concept of "collective responsibility" as the basis for counter-insurgency operations under the Governments of his predecessors: everyone in a village was regarded as a member of the PCP-SL. Accordingly, incursions into villages had resulted in mass killings or disappearances of suspected terrorists or their sympathizers. The security forces now employ more selective methods of identifying members and supporters of the PCP-SL or the MRTA. It is reported that these suspects are now detained and brought before the courts. The military and police intelligence services play an important role in this context. This has resulted in a number of significant arrests. For example, intelligence work by the National Anti-Terrorism Directorate (Dirección Nacional Contra el Terrorismo, hereafter DINCOTE) of the National Police led to the capture, in September 1992, of the founder and leader of the PCP-SL, Abimael Guzmán Reynoso, and other leading members of the PCP-SL and the MRTA. According to official sources, 95 per cent of the leaders of both movements have been captured, tried and sentenced to life imprisonment. According to figures published by the Lima-based non-governmental organization Instituto de Defensa Legal in its monthly review Ideele, armed attacks attributed to the PCP-SL decreased during the first year after Abimael Guzmán was captured: as of 31 August 1993, 1,371 such attacks were registered, as opposed to 1,842 during the 12 months previous to his arrest.

28. High-ranking military officers informed the Special Rapporteur that total respect for human rights is one of the main features of the struggle against terrorism, as is the need to gain the loyalty and support of the population. All members of the army are being instructed to this effect. Leaflets and manuals are distributed among the soldiers to enhance their awareness of human rights. Courses of instruction in human rights are being held for all

officers and troops. Furthermore, the Special Rapporteur was repeatedly assured that all complaints about human rights violations by members of the armed forces are being investigated by human rights units within the different military bases as well as military inspectorates and military courts. Soldiers found responsible are being punished according to the seriousness of the offences. However, information received by the Special Rapporteur from numerous credible sources suggests that this avowed respect for human rights has not yet been fully translated into practice.

29. Extrajudicial executions by members of the military, military-led civil defence patrols and the police continue to occur, and political violence still results in an alarmingly high level of casualties: during the first six months of 1993, 853 persons were reported to have lost their lives as victims of political killings or in armed confrontations. The PCP-SL continues to carry out armed attacks in Lima and in rural areas. During the first half of 1993, a total of 705 armed attacks were registered. They caused the death of more than 400 persons. Hopes expressed by several observers that the relatively calm months of June and July would mark the beginning of a substantial decrease in violent acts by armed opposition groups were destroyed on 19 August 1993, when, in various villages of Satipo province, PCP-SL activists assassinated 62 members of the Asháninka tribe, an ethnic minority of approximately 25,000 people living in the selva central.

30. Until September 1993, the Special Rapporteur received allegations concerning 22 cases of extrajudicial, summary or arbitrary executions said to have occurred during the first six months of the year. In accordance with the procedure established by the Special Rapporteur, these cases have been transmitted to the Government of Peru, together with 52 cases alleged to have occurred in 1992 which were reported to the Special Rapporteur only after the finalization of his report to the Commission on Human Rights at its forty-ninth session. The Special Rapporteur requested detailed information as to the measures taken to identify and bring to justice those responsible, as well as for granting compensation to the families of the victims. In addition, the Special Rapporteur has continued to receive allegations of death threats and acts of harassment and intimidation against human rights activists, journalists and lawyers (see E/CN.4/1994/7).

B. The right to life: issues of concern

1. Impunity

31. In contrast to their public expression of commitment, the authorities, and particularly those in command of the armed forces, have unmistakeably and repeatedly demonstrated their unwillingness to clarify human rights violations and sanction those responsible. The Special Rapporteur has received numerous testimonies and reports about cases in which the authorities have failed to fulfil their obligation to investigate alleged human rights violations and to identify and bring to justice those responsible. There is a clear institutionalization of impunity.

32. While there was a marked decrease in extrajudicial killings and disappearances reported during the first six months of 1993, this was followed by a renewed increase during July and August (see above, para. 26).

Furthermore, a large number of alleged violations of the right to life by members of the security forces have yet to be clarified. Very few such cases have been thoroughly investigated, and even fewer have led to the punishment of the perpetrators. Of several hundreds of extrajudicial executions since the early 1980s, only two cases resulted in army officers being sentenced by military courts to several years of imprisonment:

(a) On 10 February 1993, the Supreme Council of Military Justice upheld the sentence of 10 years' imprisonment imposed against Lt. Javier Bendezú Vargas for the killing of 15 peasants in the village of Santa Bárbara, Huancavelica. He was found guilty of abuse of authority and having made false statements, but absolved of the charges of aggravated homicide. Five other members of the military were indicted for the massacre at Santa Bárbara, but two had their sentences of 10 and 8 months' imprisonment, respectively (imposed for relatively minor military offences) upheld, while three others were acquitted of all charges (see below, para. 53).

(b) On 26 March 1993, the Supreme Council of Military Justice upheld the sentence of six years' imprisonment for abuse of authority imposed on former Lt. Telmo Hurtado Hurtado who, in August 1985, had led a military patrol that massacred 69 men, women and children in the community of Accomarca. He had been acquitted of charges of homicide, as were other military officers who had allegedly participated in the killings. The latter were also acquitted of charges of abuse of authority, negligence and making false statements (see below, para. 53).

33. In some other cases, members of the police were brought to trial. The Special Rapporteur received information about several cases which, in June 1993, were awaiting judgement:

(a) In the case of the abduction and killing of three university students in Callao in 1990 (E/CN.4/1992/30, para. 447 (f)), five members of the police were found guilty in the first instance by a civilian court. The conviction was upheld upon appeal, but the Supreme Court later quashed the appeal court's decision because of a procedural error;

(b) Five policemen were charged before a military court in the case of the killing, in March 1991, of four members of the municipal administration, including the mayor, of Chuschi, allegedly because they refused to form a comité de autodefensa civil. It is reported that none of the five accused was taken into custody, and, furthermore, that no proceedings have been initiated against members of a military patrol alleged to have been directly responsible for the disappearance of the four, who were later killed by the police.

(c) During his visit to Tarapoto, the Special Rapporteur was informed of other cases in which judicial proceedings had been opened against members of the police, some of which had resulted in convictions, as, for example, for the killing in police custody of Carlos Vásquez Reinell and Salvador Carrasco Gómez in 1991 (see E/CN.4/1993/46, para. 477 (b)).

34. In the vast majority of cases, proceedings against members of the security forces were never initiated, or end with their acquittal by the military courts or a decision to discontinue the case for lack of evidence. For example:

(a) In the case of the massacre, in May 1988, of at least 28 villagers in Cayara, the Supreme Council of Military Justice discontinued the case in January 1991 without issuing any indictments. The efforts by the Public Ministry's Special Prosecutor to investigate the case had reportedly been obstructed by the military. Of eight eye-witnesses who had testified before the Prosecutor, five were disappeared and three extrajudicially executed between June 1988 and September 1989. The Prosecutor was forced to seek asylum abroad after being threa ened with death;

(b) In the case of the assassination, in November 1988, of journalist Hugo Bustíos Saavedra, two military officers were acquitted on 26 June 1991 by the Supreme Council of Military Justice. Proceedings before a civilian court had been halted by the Supreme Court on grounds of res judicata;

(c) In the case of the massacre, in August 1990, of 16 peasants at Iquicha, leaders of counter-insurgency rondas campesinas, linked to the armed forces, were acquitted, even though they had been identified by eye-witnesses as the perpetrators of the killings;

(d) In the case of the October 1990 killing of 18 peasants in Chilcahuaycco near San Pedro de Cachi, the accused, Sgt. Jhony Zapata, alias "Centurión", who had ignored several requests to appear before a civilian examining magistrate, was absolved of all responsibility by the Supreme Council of Military Justice in September 1992. A parliamentary investigation ot this case had earlier concluded that there was sufficient evidence for members of the army and of a ronda campesina to be tried before a civilian court and that there was no basis for a parallel military trial, since the killings were a common crime;

(e) No one has been brought to justice for the killing, by a group of armed men, of 14 persons on 3 November 1991 in the Barrios Altos area of central Lima, despite detailed allegations indicating the involvement of military intelligence services in the planning and execution of the massacre. Investigations by a parliamentary commission of inquiry were interrupted on 5 April 1992 with the suspension of constitutional rule by the President. When Congress was reopened eight months later, the entire file had disappeared from the offices of the members of Congress involved (see below, para. 45);

(f) No one has been brought to justice for the abduction and subsequent execution, allegedly by members of the security forces, of more than 30 students of the Universidad Nacional del Centro in Huancayo during the months of August and September 1992, following a census in which all students had their names registered and photographs taken by the army. Allegations according to which some of the corpses were thrown into the selva from helicopters were reportedly not investigated at all.

35. These examples illustrate the factors pointed out to the Special Rapporteur as crucial in perpetuating the phenomenon of almost absolute

impunity enjoyed by members of the security forces. There is a manifest absence of efforts on the part of the authorities to investigate all cases of human rights abuses and punish those responsible. Even where investigations are initiated by the Public Ministry or parliamentary commissions of inquiry, these efforts are obstructed by the army and police (see below, paras. 39-44).

36. However, witnesses to alleged extrajudicial killings, family members of the victims, journalists and even members of the Public Ministry have been subjected to threats, harassment or killed, the most flagrant case being the disappearance and extrajudicial killing, between June 1988 and September 1989, of eight eye-witnesses who had presented testimony to the Prosecutor investigating the massacre at Cayara in May 1988 (see above, para. 34 (a)). Threats are also reported to have been made against witnesses in investigations currently under way, such as the abduction and alleged killing of a professor and nine students of the Universidad Nacional de Educación Enrique Valle y Guzmán, also known as La Cantuta, on the outskirts of Lima, on 18 July 1992 (see below, paras. 55-73). Both the Attorney-General and the Special Attorney for the Defence of the People and Human Rights informed the Special Rapporteur that the Public Ministry has no means to protect people, in particular witnesses, who receive death threats.

37. Furthermore, the Special Rapporteur has received information to the effect that both military and civilian judges lack independence. Military judges are officials of the armed forces who operate within the structures of the army's chain of command. Since 5 April 1992, when constitutional rule was suspended, civilian judges have been appointed directly by the President and the Council of Ministers. This also applies to the prosecutors of the Public Ministry appointed between 5 April 1992 and 31 December 1992. It has been repeatedly alleged that prosecutors lack the independence necessary to fulfil their tasks, and independence of the attorneys who were appointed by the President to replace those he dismissed after 5 April 1992 has been called into question. In 1993, an Honour Tribunal composed of six lawyers was established, inter alia, to examine all appointments of judges and prosecutors since 5 April 1992. At the time of preparation of this report, the Special Rapporteur has not learned the outcome of these examinations. However, he was informed that all decisions taken by the Honour Tribunal will be subject to approval by the plenary session of Congress.

38. The following sections highlight factors which contribute to the institutionalization of impunity in Peru.

The obstruction of investigations carried out by the Public Ministry

39. According to Peruvian law, the public prosecutor is entrusted the task of carrying out preliminary investigations to produce sufficient evidence that an offence has been committed and to identify the presumed perpetrators so that criminal proceedings before a civilian court may be opened. In practice, this is often very difficult: even where prosecutors do their utmost to clarify the facts, their efforts have very often been frustrated by lack of cooperation on the part of the military and the police, who in many cases do not answer requests for information or documentation, or even refuse to testify. The same obstruction reportedly faces the special attorneys for human rights (Fiscales Especiales de Derechos Humanos), whose specific task is to

investigate alleged human rights violations, and by prosecutors appointed on an ad hoc basis to investigate particularly serious cases of alleged human rights abuses. Similarly, it has been reported that members of the security forces often simply refuse to appear before civilian courts (see, for example the cases of journalist Hugo Bustíos Saavedra or the Chilcahuaycco massacre, paras. 34 (b) and (d) above).

40. The Special Rapporteur has also been informed that attorneys who pursue investigations with too much zeal have been subjected to death threats and harassment. For example, Dr. Carlos Escobar, former Special Prosecutor in Ayacucho in charge of investigating the massacre in Cayara, was forced to leave the country in November 1989 out of fear for his own safety and that of his family. Thus, several of the interlocutors of the Special Rapporteur during his visit asserted that prosecutors rarely pursue with vigour the assembling of the evidence required to formalize a complaint before the courts. The prosecutors themselves described the difficulties they face in their work due to overcentralization of the working of the Public Ministry as well as lack of personnel and material resources (e.g. lack of vehicles or fuel to reach remote areas, and in some cases even lack of paper). In some cases, however, the Special Rapporteur has received credible information that both prosecutors and judges refuse to travel to remote places, for example to carry out exhumations, unless they are paid a considerable sum of money by the families of the victims.

41. Even before the suspension of constitutional rule on 5 April 1992 it was very difficult for prosecutors to file complaints against specific members of the armed and police forces; now, this has become almost impossible. During meetings with witnesses to alleged extrajudicial, summary or arbitrary executions and the families of victims, the Special Rapporteur observed a deep lack of confidence in the working of both the judiciary and the Public Ministry. One person summed up the view, clearly shared by many others: "There is indifference everywhere".

Limitations on investigations carried out by parliamentary commissions of inquiry

42. According to article 180 of the 1979 Constitution, investigative commissions of Congress may be instituted on any issue of public interest. The Constitution confers on these commissions the same authority as judges possess to subpoena documents or persons whose testimony they consider necessary for the inquiry. No document or person is exempt. Police assistance may be requested in the bringing of persons before a commission.

43. Between 1980 and 1990, almost all major cases of alleged extrajudicial killings were investigated by parliamentary commissions, including the killing of seven civilians by members of the military in Pucayacu in August 1984, the killing of 69 peasants in Accomarca in August 1985 and the mutinies and mass killings of at least 125 persons in June 1986 in three prisons near Lima (El Frontón, Lurigancho and Santa Bárbara). Accomarca was the first case to be investigated by a parliamentary commission. According to the information received by the Special Rapporteur from one of the deputies who was a member of this commission, during the first investigation it visited the site of the mass grave of the 69 peasants, made excavations and took bones to Lima for

study. This was the only case in which a commission of inquiry was granted access to the work of the military inspectorate and could speak to the military officers accused of actually having carried out the killings. Even so, interviews with such officials could not be treated as formal statements, since proceedings had already been opened before a military court and the case was considered sub judice. Accomarca was also the only case in which a high-level military official, General Jarama, the political-military commander of Ayacucho, was forced to retire as a consequence of human rights violations. He had first denied that the massacre had taken place. The Commission concluded that the massacre should be treated as a common crime and tried before a civilian court.

44. After this investigation, it became more difficult for parliamentary commissions to carry out their task. The Special Rapporteur was informed that members of Congress involved were subjected to threats and acts of harassment while the army became less and less cooperative, refusing or delaying the presentation of documents, including patrol reports.

45. After 1990, inquiries were initiated, inter alia, into the above-mentioned cases of Barrios Altos, Chilcahuaycco and Chuschi, as well as the massacre of 13 persons in Chumbivilcas in April 1990, the killing of seven members of the political party Izquierda Unida near Huancapi in 1991 and the execution in May 1991 of six persons in Huaya and Chambara. When Congress was dissolved on 5 April 1992, inquiries then under way were interrupted. The Special Rapporteur was informed by participants in these parliamentary commissions that, when the CCD was opened eight months later, none of their investigations were continued. In a number of cases, valuable information had meanwhile disappeared from the offices of congressmen involved in these inquiries. In the case of Barrios Altos, the entire file disappeared; in other cases, such as the massacre at Accomarca, testimonies and other documents disappeared.

46. In many cases, commissions were not able to reach unanimous conclusions. Majority and minority reports often differ considerably in their assessment of the evidence obtained and attribution of responsibility. Nevertheless, investigations by parliamentary commissions have shed light on a number of important cases of alleged human rights violations, even though their recommendations, particularly to bring those responsible for human rights abuses before civilian courts, have rarely been followed. Furthermore, evidence gathered by such commissions that points to the high-level involvement of political and military leaders in alleged human rights violations has not been taken up by the courts.

47. In January 1993, the CCD established a Human Rights Commission to investigate cases of alleged human rights violations. As of early April 1993, this Commission was investigating 205 outstanding cases of human rights abuses. However, it did not continue the inquiries that had been interrupted when the previous Congress was dissolved on 5 April 1992. On 2 April 1993, the CCD voted in favour of the establishment of a special commission of inquiry into the alleged abduction and execution by members of the military of nine students and one professor of La Cantuta university on 18 July 1992 (see below, paras. 55-73).

The dispute over military versus civilian jurisdiction in human rights cases

48. A further factor contributing to the impunity enjoyed by members of the security forces is the fact that, where judicial proceedings are opened against them for alleged extrajudicial executions, they are almost without exception heard by military courts.

49. Article 282 of the Political Constitution of Peru of 1979 established military jurisdiction over members of the army and the police when they are accused of offences specified in the Code of Military Justice of 1980. 1/ The 1992 Code of Criminal Procedure (art. 14) limits this military jurisdiction to offences directly linked with military or police functions that affect exclusively military interests and the disciplinary order of the army and the police ("delitos de función"). However, military courts are competent to deal with offences contained in the civilian Criminal Code only if both the accused and the victim are members of the military (art. 324 of the Code of Military Justice). Furthermore, the Code of Military Justice (art. 340) itself emphasizes the strictly military character of its jurisdiction, i.e. where members of the military are charged with two unrelated offences - only one of which is military - the military courts' jurisdiction is limited to that offence and the common crime is to be dealt with by the civilian courts.

50. In practice, over the years military judges have claimed competence in all cases in which offences have been committed by the security forces while on duty, regardless of the character of the offence. 2/

51. The Coordinadora Nacional de Derechos Humanos pointed out that this wide interpretation contradicts the original intention of military jurisdiction, namely to preserve discipline within the armed forces and the police. As was pointed out by the United Nations Working Group on Enforced or Involuntary Disappearances in its report to the Commission on Human Rights at its forty-eighth session, "military tribunals should be reserved exclusively for those members of the security forces who commit military crimes, a category from which such serious human rights violations as enforced disappearances must be clearly and explicitly excluded." (E/CN.4/1992/18, para. 367). This applies equally to extrajudicial, summary or arbitrary executions. All common crimes, even if committed by members of the army or police, fall within the jurisdiction of the civilian legal system and are to be judged according to the Penal Code. It has been argued by several observers that to regard all violations of human rights committed by security forces personnel as acts carried out in fulfilment of military or police functions or related to them is to establish a different standard of jurisdiction based exclusively on the identity of the perpetrator, thus violating the fundamental principle of equality of all persons before the law. The result in most cases is impunity for the security forces.

52. Where there is a conflict between the military and the civilian courts as to the appropriate jurisdiction, the Supreme Court is to decide which court is to hear the case. In practically all such cases, the Supreme Court has referred the matter to the military courts. It has been reported that in many cases proceedings before military courts are opened once a case has already

been brought before a civilian court with the clear aim of provoking a conflict between the courts as to their competence and removing the matter from civilian jurisdiction. 3/ In other instances (see, for example, para. 34 (b) above), it has been reported that cases already being heard by a civilian court are then taken up by military courts which reach a final verdict rapidly. This means that the case has been adjudicated and, being bound by the prohibition of res judicata, the civilian court is obliged to stop the proceedings concerning the case. Furthermore, the verdicts reached by the military courts are almost always to discontinue the case or acquit the accused for lack of evidence.

53. The attention of the Special Rapporteur has been drawn to the light sentences imposed by military courts in the two cases where there have been convictions of military personnel. In these cases a lack of proportion between the gravity of the crimes and the sentences imposed is manifest. One officer was sentenced to 6 years' imprisonment for abuse of authority and making false statements in the case of the killing of 69 persons in Accomarca (see above, para. 32 (b)), the other to 10 years' imprisonment for abuse of authority in the case of the killing of 15 peasants in Santa Bárbara (see above, para. 32 (a)). The maximum term of imprisonment for these offences under the Military Code of Justice is 20 years (Article 26). In both cases, the two army officers were acquitted of murder charges, and in both cases several other accused members of the military patrols which carried out the massacres were acquitted of all charges. Furthermore, in the case of Accomarca, the sentence referred only to the 69 persons killed in the village. Nobody was convicted for the execution of eight peasants in Accmay while the army patrol was on its way to Accomarca, although evidence of these killings had been gathered by the parliamentary commission of inquiry which had investigated the case. This seems to contradict the assurances given to the Special Rapporteur by high-level military officers concerning the punishment of human rights violations within the army (see above, para. 28).

The failure to investigate allegations concerning the existence of a "death squad"

54. The Special Rapporteur has received reports concerning active involvement of high-level military officers in the planning and carrying out of extrajudicial killings. A "death squad" composed of members of the Division of Special Forces of the army is said to operate under the command of a member of the National Intelligence Service, with the full knowledge and acquiescence of the President of the Armed Forces Joint Command. The cases whose planning and execution have been imputed to this death squad include the massacre at Barrios Altos (see above, para. 34 (e)) and the abduction and alleged execution of nine students and a professor of La Cantuta university (see below, paras. 55-73). During the Ibero-American Summit at Bahía, Brazil, in July 1993, President Fujimori tacitly conceded to journalists that the death squad exists. Like most complaints about human rights abuses and, in particular, violations of the right to life, these grave allegations have not been the subject of thorough investigations by an independent and impartial body.

A case to illustrate the failure to investigate these allegations: La Cantuta

55. During the night of 17 to 18 July 1992, members of the Peruvian army entered the campus of the Universidad Nacional de Educación Enrique Guzmán y Valle, also known as La Cantuta, situated on the outskirts of Lima. A military detachment had been permanently placed on the campus of the university since 21 May 1991 and had full control of access to the campus on the night of 17 to 18 July 1992. Students were forced out of their dormitories and made to lie down on the floor in the corridors. In front of numerous eye-witnesses, the following nine students, including two women, whose names were on a list carried by the soldiers, were selected and abducted, together with professor Hugo Múñoz Sánchez: Bertila Lozano Torres, Dora Oyague Fierro, Robert Teodoro Espinoza, Marcelino Rosales Cárdenas, Juan Mariños Figueroa, Felipe Flores Chipana, Luis Enrique Ortiz Perea, Armando Amaro Cóndor and Heráclides Pablo Meza.

56. On 24 July 1992, a petition for habeas corpus was filed on behalf of the 10 victims before the Eleventh Criminal Court in Lima, but the judge did not uphold the writ, stating that the military authorities had denied that they had been detained by the army. This decision was based on a statement made by several generals of the Peruvian army who declared that no military operation had taken place at La Cantuta during the night in question.

57. A second petition for habeas corpus, filed on 21 August 1992 before the Fourteenth Criminal Court in Lima, was upheld but later revoked on appeal on the ground that there was no evidence to prove the previous existence of the disappeared persons. However, all nine students were registered with the university's Central Welfare Office as residents of the students' accommodations. Professor Múñoz Sánchez, associate professor at the Faculty of Pedagogy, had also been authorized to live on university premises. On this occasion, the President of the Armed Forces Joint Command, General Nicolás de Bari Hermoza Ríos, admitted in a statement to the Fourteenth Criminal Court that a military operation had taken place at the university during the night of 18 July 1992. However, he asserted that it was not possible to identify the individuals who had participated in the operation.

58. Three weeks after the events, on 6 August 1992, the Public Ministry opened inquiries into the alleged abductions. On 23 November 1992, the father of one of the students filed a formal complaint with the Public Ministry regarding the disappearance of his daughter. The investigations carried out by the Public Ministry to establish the whereabouts of the disappeared through requests for information from DINCOTE, the State Security Directorate and the Division for Disappeared Persons of the National Police yielded negative results. Repeated requests for information about the military personnel based at La Cantuta university during the night of 17 July 1992 were ignored by those responsible for military control of the area. On 8 January 1993, the Public Ministry reiterated its request for information and warned that renewed failure to comply would lead to criminal proceedings against those responsible for non-compliance. However, although no information was received from the military unit, no such prosecutions were undertaken.

59. On 2 April 1993, a member of Congress presented the CCD with an unsigned document reportedly written by a group of military officers called

"Sleeping Lion". The document alleged that members of the Special Forces Division (DIFE) of the army had abducted, executed and buried the 10 victims in clandestine graves in the early hours of the morning of 18 July 1992. DIFE was said to be acting under the command of a member of the National Intelligence Service (SIN), Mr. Vladimiro Montesinos, who is also an adviser to the President of the Republic. This operation was stated to have been carried out in coordination with the director of the army's Intelligence Directorate (DINTE), and with the full knowledge of the President of the Armed Forces Joint Command. The "Sleeping Lion" document also referred twice to the killing of 14 persons in the Barrios Altos neighbourhood of Lima in November 1991.

60. As a result of these grave allegations, the CCD approved the establishment of a Special Commission of Inquiry into the case of La Cantuta. The Commission, which was given 30 days to produce a report, commenced its work by interviewing witnesses and family members of the victims. In conformity with the investigative powers provided for in article 180 of the 1979 Constitution (see above, para. 42), the Commission requested an interview with the Minister of Defence, the President of the Armed Forces Joint Command as well as the officials whose names had appeared in the document by "Sleeping Lion". General Hermoza produced a medical certificate to the effect that he was unable to appear before the Commission between 14 and 18 April 1993. However, on 15 April 1993, General Hermoza presented two complaints before the military courts: one against the anonymous authors of a document entitled "The capture and extrajudicial execution of a professor and 10 students of the Universidad Enrique Guzmán y Valle - La Cantuta" bearing the name of COMACA (for "Colonels-Majors-Captains") and a second one against army personnel who might prove to be responsible for the disappearances, thus initiating proceedings before the Supreme Council of Military Justice.

61. When General Hermoza appeared before the Commission of Inquiry on 20 April 1993, he denied that the security forces and, in particular, the Peruvian Army, had participated in any way in the presumed disappearance of the 10 victims. He also stated that at no time had there been authorization or orders given by the high command of the army to carry out the incursion into La Cantuta university. Following this statement, the General held a press conference at which he verbally attacked the three members of the Special Commission of Inquiry who were members of opposition parties.

62. On 21 and 22 April 1993, tanks and troops were deployed at strategic sites in Lima in what was perceived as a show of military force and as intimidation directed at attempts to undertake independent and impartial investigations of human rights violations imputed to members of the armed forces and in particular, at the opposition members of the CCD linked to the investigation of the La Cantuta case.

63. The Special Commission of Inquiry was denied access to the documentation assembled during the proceedings before the military courts which General Hermoza had initiated. The Commission requested the appearance of certain military officers named in the above-mentioned documents and of Mr. Montesinos. Those asked to give evidence solicited authorization to comply with this request from the military justice authorities. The latter,

on 27 April 1993 and 9 June 1993, passed resolutions which refused permission for their appearance before the Commission on the grounds that this would interfere with the exercise of the functions of the military judiciary. However, the majority report that concluded the investigation of the Special Commission (see below, para. 67) pointed out that there was no legal basis for such a decision. On the contrary, it was in contravention of article 180 of the 1979 Constitution.

64. On 5 May 1993, General Rodolfo Robles, the third highest ranking officer in the Peruvian Army, made public a signed statement in which he declared that a military unit linked to the intelligence services had been responsible for carrying out the abduction and alleged execution of the 10 victims at La Cantuta, the massacre of 14 people in Barrios Altos and the murder of "engineers in Huaral". 4/ Furthermore, General Robles accused the officer whom he named as the head of this military unit of having been in control of an operation in which Manuel Febres Flores, a lawyer, was abducted and killed in Lima in July 1988. These allegations largely correspond with those made by COMACA and "Sleeping Lion". General Robles based his accusations on information which he claimed was given to him by several high-ranking army officers, one of whom had served for a short time as chief of the military intelligence service. General Robles and his family left Peru and sought refuge in Argentina shortly after he published this signed statement. Members of the Special Commission of Inquiry visited him there on 18 May 1993.

65. On 24 May 1993, the CCD held a debate to decide whether the time-limit set for the Special Commission of Inquiry into the case of La Cantuta should be extended by another 30 days. As a result of this debate, the CCD approved a motion to the effect that it could not demand the appearance before parliamentary commissions of inquiry of military officers involved in alleged human rights violations after proceedings had been opened before the military courts. In what was widely described as an act of self-censorship, the majority of the CCD voted that only those politically responsible, namely the Minister of Defence and the President of the Armed Forces Joint Command, could be requested to appear. The mandate of the Special Commission of Inquiry into the La Cantuta case was extended for another 20 days.

66. On 8 June 1993, the President of the Armed Forces Joint Command appeared a second time before the Commission. He repudiated the CCD motion by refusing any questions put to him by the members of the Commission, on the ground that proceedings into the case had been opened before the military courts.

67. On 24 June 1993, the Commission delivered two final reports. The majority report concluded that there was evidence of military involvement in the events of La Cantuta, indicating criminal responsibility of named officers, and recommended that, as the abduction and disappearance of the 10 victims was a common crime and thus outside the jurisdiction of the military courts, it should be dealt with by the civilian courts in application of the civilian Criminal Code. The minority report denied the existence of such evidence and declared that no pronouncements could be made regarding

criminal responsibility, since the military courts were investigating the case. On 26 June 1993, the plenary session of the CCD adopted the minority report.

68. The unwillingness of the authorities to clarify fully the case of La Cantuta was further illustrated by the Public Ministry's handling of the discovery and subsequent excavation of four clandestine graves on the road from Lima to Cieneguilla on 8 July 1993. A map showing the location of the graves had been made available to the director of the weekly magazine Sí in Lima. Immediately after being informed of the discovery of the graves, which some sources linked with the La Cantuta case, the Special Rapporteur addressed an urgent appeal to the Government of Peru. He called upon the authorities to place the site without delay under reliable round-the-clock protection and recommended that excavations be carried out by international experts in forensic medicine, anthropology and archaeology in accordance with the highest standards of expertise in order to ensure that all the forensic evidence could be obtained and preserved, thus making it possible to identify the corpses.

69. The Special Rapporteur was later informed that a delay of a full week elapsed between the publication of the location of the graves and the placing of the site under the protection of the authorities. The graves were thus left open to interference in the intervening period. An offer by members of an Argentine team of forensic experts to put their expertise at the disposal of the Peruvian authorities was reportedly declined by the Attorney-General who was said to have stated, inaccurately, that Peruvian legislation prohibited the participation of foreigners in such investigations. In the event, the excavation of the corpses was allegedly carried out with inadequate instruments and the human remains retrieved from the graves were reportedly taken to different laboratories in Lima. Valuable evidence is feared to have been lost in this way. Several sources expressed their concern at what they described as a deliberate effort to impede the identification of the bodies and the gathering of evidence.

70. On 13 July 1993, the anti-terrorist unit of the National Police (DINCOTE) informed the public at a press conference that during a police operation on 10 July 1993, five members of the PCP-SL had been arrested and had their documents seized, among them a letter to Congressman Roger Cáceres, President of the CCD's Commission on Human Rights and Pacification, which allegedly included a map drawn by the PCP-SL indicating the location of alleged clandestine graves holding the bodies of the disappeared of La Cantuta. DINCOTE reportedly asserted that both this map and the one forwarded to the magazine Sí had been made by the same person. However, one of those arrested, who was presented as the author of the letter, reportedly denied publicly having had the documents in his possession. Different experts and journalists who have carried out comparisons of the map presented by DINCOTE and the one sent to Sí magazine claim that they were not drawn by the same person: considerable differences in the handwriting of the legend are noticeable, even at first glance.

71. The forensic analysis of the remains found in the graves demonstrated that they were indeed human remains, belonging to five different persons, whose age, stature, etc. corresponded to that of the students of La Cantuta.

On 20 August 1993, Public Ministry representatives established that two keys which had been found during the excavation of the graves at Cieneguilla belonged to two students of La Cantuta.

72. On 26 August 1993, the Provincial Prosecutor of the Eighth Provincial Prosecutor's Office in Lima decided to refer the entire dossier to the military judiciary. Numerous observers have expressed concern at the refusal by the Provincial Prosecutor to pursue the investigation of the case with a view to criminal prosecution by the civilian courts. They recalled that the abduction and presumed execution of the 10 victims were to be regarded as a common crime.

73. On 22 September 1993, the Special Rapporteur addressed another communication to the Government of Peru in which he expressed his concern about the reported deficiencies in the excavation of the graves and about the decision to refer the case to the military courts. He urged the competent authorities to carry out a full and independent investigation of the case with a view to identifying, prosecuting and punishing those responsible, as well as providing compensation to the families of the victims. He also appealed to the authorities to ensure that the investigation was carried out by the civilian judiciary, in conformity with Peruvian law, and reiterated that the assessment and analysis of the remains retrieved from the graves at Cieneguilla should be carried out by internationally recognized forensic experts, in accordance with the highest standards of expertise. The Special Rapporteur urged the authorities to assure effective protection of all those who participate in these investigations.

2. The death penalty

74. Under the Constitution of 1979, capital punishment could be imposed only for treason in times of external war (art. 235). On 3 August 1993, the CCD approved, by 55 votes to 21, a broadening of the scope of the death penalty in the draft of the new Constitution. The article approved (art. 159) reads as follows: "The death penalty may be applied for the crimes of treason and terrorism, in accordance with national laws and international treaties to which Peru is party". The international treaties to which Peru is party include the American Convention of Human Rights (Pact of San José). It is particularly important in this context to note that the right to life is non-derogable under this Convention, and that its article 4(2) expressly prohibits the extension of the death penalty. In addition, an extension of the scope of capital punishment contravenes the spirit of article 6 of the International Covenant on Civil and Political Rights. 5/ The draft of the new Constitution was approved, in its entirety, by the Peruvian people in a referendum on 31 October 1993.

75. The extension of the death penalty to cover crimes of terrorism and treason in Peru is particularly alarming in the light of the anti-terrorism legislation which was put into force during the suspension of constitutional rule between April and December 1992 and ratified by the newly appointed CCD in January 1993. Through substantive and procedural changes to the law,

Decree Laws have severely curtailed internationally recognized fair trial guarantees, in particular the right to an adequate defence. The following are of particular note:

(a) "Crimes of terrorism" have been redefined by several Decree Laws. 6/ The terms used in these decrees are wide and imprecise, leaving excessive room for interpretation. The crime of "treason" is specified as a new terrorism-related crime applicable to civilians;

(b) All cases of treason are transferred to the jurisdiction of the military justice system, i.e. civilians are being tried by military courts; 7/

(c) The age of criminal responsibility for "crimes of terrorism" has been reduced from 18 to 15 years; 8/

(d) Wide discretionary powers have been given to the police (DINCOTE) charged with the task of "preventing, investigating, denouncing and combating" terrorism-related crimes: terrorist suspects may be held for up to 15 days, so long as notification has been given within 24 hours after arrest to a representative of the Public Ministry and a judge. The police may decide to hold a person incommunicado. 9/ In cases of treason, the police may decide to hold a person in pre-trial detention for a further period of 15 days, if they deem it necessary, incommunicado. None of these decisions is subject to approval or review by a judge. 10/ During the trial (before the superior court) and appeal stages before civilian courts, the identity of all court officials, including judges and representatives of the Public Ministry, is kept secret, even from the accused and their counsel. Trials within the military justice system are secret at all stages;

(e) In terrorism-related cases, pre-trial detention, which is normally limited to 15 months, may be extended to 30 months if the cases are "of a complicated nature". In cases which prove "especially difficult", the "period of investigation", i.e. pre-trial detention, may be extended to up to five years; 11/

(f) Neither police nor judges may grant any form of conditional liberty; 12/

(g) No petitions for habeas corpus or amparo may be filed during police or judicial investigation of cases of terrorism and treason. As a consequence, there is no way of challenging the lawfulness of a detention nor may a judge check the treatment to which a detainee is being subjected; 13/

(h) A detainee is allowed access to legal counsel only when the police have decided to present him or her to a representative of the Public Ministry; 14/

(i) Strict time-limits are established for all stages of terrorism-related trials: the examining stage, carried out by the examining magistrate, must be finalized within 30 consecutive days. This period may be extended by a further 20 days. The examining magistrate is not entitled to close the case on any grounds but must refer it to a superior court which

has 15 days to hand down its decision. If an appeal against this decision is filed, the Supreme Court must decide within 15 days. 15/ Decree Law No. 25.659 provides that the periods in which each stage of the trial must be concluded may be reduced to a third of the terms established by Decree Law No. 25.475 for proceedings in cases of treason; 16/

(j) Neither the defendants nor their lawyers may challenge the impartiality of a judge, on any ground whatsoever; 17/

(k) Those accused of terrorism and treason may be tried and sentenced in absentia. 18/

76. The Special Rapporteur is deeply concerned at the implications of these severe restrictions on fair trial guarantees, which contravene numerous safeguards embodied in international human rights instruments. During his visit to Peru, the Special Rapporteur was informed of cases in which persons were sentenced in absentia to life imprisonment for terrorism-related crimes. Once captured, they were taken directly to jail to begin serving their sentence. 19/ After the draft Constitution was approved by the Peruvian people on 31 October 1993, a 15-year-old could be sentenced to death in absentia, for treason by a military court. 20/

77. In this context, it should be noted that, in his statement as head of the Peruvian delegation to the World Conference on Human Rights in Vienna in June 1993, the Minister of Justice explained that the new anti-terrorism legislation in force since 5 April 1993 rectified an obsolete penal framework which failed to consider new types of crimes and was not adequate for the emergency situation in Peru. However, no situation, not even the exceptional and difficult circumstances which prevail in Peru, can justify restrictions of the full respect for the right to life through legislation governing trial procedures.

78. On 22 September 1993, the Special Rapporteur appealed to the competent authorities in Peru to halt the process by which the death penalty for terrorism and treason might become part of the new Constitution. He also urged them to revise the legislation governing preliminary investigations and judicial proceedings so that they would conform to internationally recognized fair trial standards.

3. Civil defence groups

79. Civil defence groups composed of peasants and, in the rain forest, members of native tribes such as the Asháninkas, have played an increasingly important role in fighting the armed opposition groups.

80. As stated earlier (see above, para.17), rondas campesinas are a traditional form of peasant organization with the primary aim of protecting the social and economic interests of their communities. Such traditional rondas campesinas originated in the department of Cajamarca, long before the rise of the PCP-SL and the MRTA. They were legally recognized by the Government of Alán García Pérez in 1986: Law No. 24.751 of 6 June 1986 placed the rondas under the control of the Ministry of the Interior. They were described as organizations intended to serve the community to ensure the

defence of their land, cattle and other goods and to cooperate with the authorities in the elimination of all offences. In 1991, they were entitled to possess and use weapons and ammunition, subject to previous authorization by the Armed Forces Joint Command. 21/

81. Beginning in the mid-1980s, the army started establishing comités de autodefensa. 22/ They were legally recognized in 1991. 23/ Their declared purpose was to exercise self-defence in their communities, prevent infiltration by terrorists, defend themselves from the latter and support the Peruvian Army and the police. These self-defence committees were placed under the control of the political-military commands. 24/ Military or police authorities were entrusted the task of counselling, supporting and controlling the comités de autodefensa.

82. It is under the Government of President Fujimori that civil defence patrols are said to have spread to all the major areas of conflict. Many of the comités de autodefensa were said to have been set up under compulsion and even threats, while others were formed voluntarily and have actively sought the assistance of the security forces. The military provides them with arms and ammunition.

83. Full military authority over both rondas campesinas and comités de autodefensa was conferred on the army through Supreme Decree 002-93-DE/CCFFAA of 16 January 1993, which provided that the organization and functions of the rondas was to follow the rules established for comités de autodefensa and subjected both types of self-defence groups to military control. By the same decree, autonomous rondas were declared illegal. As the President of the Armed Forces Joint Command pointed out to the Special Rapporteur, the rondas campesinas are now viewed as the army's main ally in fighting the insurgency.

84. The Special Rapporteur has received numerous reports of violations of the right to life in the context of these civil defence groups. Ronderos are said to have been responsible for extrajudicial executions, which were carried out either in cooperation with or in the company of patrols of the security forces; by the ronderos on their own, but under the strategic, tactical and operational orders of the security forces; or with the support or acquiescence of the security forces. Those targeted are often peasants who refuse to collaborate and are therefore viewed as members or sympathizers of the PCP-SL or the MRTA. The latest example of extrajudicial executions by ronderos, recently brought to the attention of the Special Rapporteur, is the killing on 10 September 1993 in Delta, Pichanaqui, of 10 settlers, reportedly by a local comité de autodefensa linked to the army's command structure (see also above, para. 38(c)).

85. The increased militarization of the rondas is said to contravene their original aims which included aspects of social and economic cooperation within the community. Some civil defence groups that demanded social and economic reinsertion as well as recognition of their rights as ethnic minorities, such as the Asháninkas in Satipo and Río Tambo or the ronderos of Tulumayo, were reportedly accused by the military of affinity with the PCP-SL. Fears have been expressed that their increased militarization may eventually convert civil defence forces into another factor contributing to the spiral of violence in Peru. The distribution of arms to participants in self-defence

groups constitutes a danger in this regard. The Special Rapporteur is also concerned that, since control over peasant self-defence groups was conferred by law on the military, non-governmental human rights associations which had provided legal counselling to the rondas campesinas have been banned from continuing to collaborate with them, although, as was pointed out to the Special Rapporteur, the peasants themselves had requested their continued cooperation.

4. Abuse of force in areas under a state of emergency

86. The Special Rapporteur has received numerous reports which indicate that the state of emergency prevailing in almost one-third of the Peruvian territory contributes to human rights violations, including extrajudicial executions. Since 1981, when the first state of emergency was declared in five provinces of the Department of Ayacucho after an attack by the PCP-SL on a police station in Tambo, zones of emergency have been extended to large areas of the country and covered, at times, more than half of the country. As mentioned above (see para. 16), 51 per cent of the population is currently living under a state of emergency.

87. Where such emergency zones have been declared, the 1979 Political Constitution of Peru has allowed the suspension of the constitutional guarantees of personal freedom and security; inviolability of the home; freedom of assembly and freedom of movement. 25/ Political-military commands are in control of all security forces, including paramilitary civil defence forces, in all areas under state of emergency except the judicial districts of Lima and Callao. Furthermore, they implement all executive policies and orders and coordinate the functions of the civilian authorities. 26/

88. The vast majority of human rights violations, and particularly extrajudicial, summary or arbitrary executions and disappearances, were reported to have occurred in these areas, greatly facilitated by the generalized practice of arrests without a warrant and unacknowledged detention. It is hoped that the recent establishment of a national register of detainees may prove a positive step to improve transparency.

III. CONCLUSIONS AND RECOMMENDATIONS

89. The Special Rapporteur has taken note with appreciation of the considerable decrease in extrajudicial, summary or arbitrary executions during the first half of 1993. However, during July and August 1993, the number of extrajudicial killings was said to have increased again.

90. The Special Rapporteur is fully aware of the difficulties faced by the Peruvian Government in its duty to curb an armed insurgency which, over more than a decade, has done huge damage to the country. Even after the arrest of most of the leaders of both the PCP-SL and the MRTA, violent attacks by members of both armed opposition groups continue to cause enormous human and material losses. The Special Rapporteur wishes to express his most profound repugnance at the total lack of respect for the right to life of civilians, as well as members of State security forces who are hors de combat, shown by the members of both movements.

91. However, it is precisely in this context that the absolute character of the right to life must be recalled: under no circumstances may internal political instability or any other public emergency be invoked to justify a derogation from the right to life and security of the person. This principle of non-derogability is embodied in international legal instruments such as the International Covenant on Civil and Political Rights (art. 4(2)) and the American Convention of Human Rights (art. 4). It is also expressed by principle 8 of the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Havana from 27 August to 7 September 1990.

92. It is worth noting that almost all representatives of non-governmental human rights associations have emphasized that the most widely acclaimed successes in the fight against armed opposition groups were achieved precisely where the security forces have shown respect for the rights of persons targeted in counter-insurgency operations. The cases of Abimael Guzmán Reynoso and other leading members of the PCP-SL and the MRTA were repeatedly mentioned to the Special Rapporteur in this regard.

93. Despite the decrease in numbers of alleged extrajudicial, summary or arbitrary executions, the Special Rapporteur continues to be gravely concerned about the situation with regard to the right to life as prevailing to date in Peru. The Government's declaration of its firm determination to "definitely eliminate" extrajudicial executions, stated in an official document entitled "Presidential directive on the respect for human rights" which was published in El Peruano on 13 September 1991 and on numerous occasions since, is far from having been translated into practice. The institutionalization of impunity, the planned extension of the scope of the death penalty, human rights violations by civil defence groups and the situation in areas placed under state of emergency have been identified as the main problems with regard to the right to life.

A. Impunity

94. Impunity is the key to the perpetuation of violations of the right to life. Initiatives to raise awareness of human rights among members of the security forces and the population in general through educational and other measures are to be welcomed as a positive step. However, the lack of political will shown by the authorities with regard to implementing thorough and independent investigations into extrajudicial, summary or arbitrary execution, prosecuting and punishing those found responsible and granting compensation to the families of victims is illustrative of their lack of commitment to the respect and protection of the right to life.

95. In the following paragraphs, the Special Rapporteur suggests a number of measures which may rectify some of the shortcomings identified.

96. As a first and absolutely essential condition for the investigation of complaints concerning human rights abuses by members of the security forces, efficient protection must be provided for all those who participate in such investigations, in particular witnesses and family members of victims. This means, inter alia, that all attempts on their safety must be investigated and

their authors prosecuted and punished. Furthermore, the families of victims of alleged extrajudicial, summary or arbitrary executions must be notified of all inquiries carried out by the police or the courts, their progress, as well as any decisions taken. Their right to participate as civilian parties in criminal proceedings, as set out in the relevant procedural legislation, must be fully ensured in practice.

B. The civilian justice system

97. Representatives of the Government explained to the Special Rapporteur that the principal reason for establishing military jurisdiction over persons accused of treason was the inefficiency and corruption of the civilian judiciary. Thus, the Minister of Justice stated that in the years before the President decided to suspend constitutional rule on 5 April 1992, the civilian courts had freed hundreds of suspected members of the PCP-SL for lack of evidence. In 12 months they had not sentenced one single terrorist. The Minister went on to explain that the military justice system was much more efficient. He voiced his concern about due process in proceedings before the military courts but expressed his doubts whether the inefficiency demonstrated by the civilian tribunals constituted a guarantee of due process. The same argument - lack of efficiency of the civilian courts - was used by the President of the Armed Forces Joint Command to explain out why members of the military who have committed common crimes were tried before military courts. He asserted that trials before these courts were more speedy and sanctions against members of the security forces were more drastic than those imposed in civilian judicial proceedings. As described in detail earlier in this report, this is, in practice, simply not accurate.

98. However, the fact that the civilian justice system fails to fulfil its function of investigating and punishing both human rights violations committed by members of the security forces and crimes carried out by the armed insurgency is due to official unwillingness to eradicate the reasons for its inefficiency, repeatedly identified by both government authorities and non-governmental observers as corruption and insufficient personnel and material resources to enable civilian judges to carry out their tasks, as set out in the Constitution, in a speedy yet thorough manner. The Special Rapporteur feels that if the civilian courts do not function in a satisfactory way, the authorities should try to solve the root causes rather than simply transfer jurisdiction over human rights violators and persons accused of treason to the military courts, where the consequences are restrictions of fair trial guarantees for those accused of treason and almost absolute impunity for violators of human rights.

99. The following may therefore be recommended:

(a) Reform of the civilian judiciary with due reference to the Basic Principles on the Independence of the Judiciary, adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Milan, Italy, from 26 August to 6 September 1985 and endorsed by the General Assembly in its resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985, and, in particular, allocation of sufficient human and material resources to the civilian judiciary and the Public Ministry;

(b) Decentralization of the working of the Public Ministry through an extension of the autonomous powers given to the Provincial Prosecutors, in particular those charged with the investigation of alleged human rights violations. This should be accompanied by a strengthening of the Public Ministry's representations in the zones of emergency;

(c) Investigation into allegations by an independent and impartial body as well as imposition of disciplinary and, where applicable, judicial sanctions against judges and prosecutors found to have failed to comply with their responsibilities;

(d) Review of all appointments of judges and prosecutors since 5 April 1992 by an independent and impartial body; 27/

(e) Efficient protection for all prosecutors and judges from attempts on their lives and physical integrity by both members of armed opposition groups and the security forces.

The Special Rapporteur fully endorses the statement made by the United Nations Working Group on Enforced and Involuntary Disappearances, according to which "military tribunals should be reserved exclusively for those members of the security forces who commit military crimes, a category from which such serious human rights violations as enforced disappearances must be clearly and explicitly excluded." (E/CN.4/1992/18, para. 367). This applies equally to extrajudicial, summary or arbitrary executions.

100. In the absence of a functioning civilian justice system, the independent and impartial body referred to above could be envisaged as a special commission composed of experts, both Peruvian and international, of undisputed independence and competence. An international organ with experience in this field such as the International Commission of Jurists and its Centre for the Independence of Judges and Lawyers could help to identify these experts and to indicate how this special commission could work in a fair and speedy manner.

101. In addition, the obligation of members of the security forces to cooperate with the civilian judiciary, as stipulated by pertinent procedural norms, must be enforced. Those who fail to comply with requests to appear before the civilian courts or provide information to the judges and thereby obstruct the investigation of alleged human rights violations must be held responsible. This also applies where investigations are being carried out by parliamentary commissions of inquiry.

102. The Special Rapporteur calls upon the Government of Peru to ensure the fulfilment of its obligation under international law to carry out thorough, impartial and independent investigations into all complaints of human rights abuses. 28/ All those who actually carry out such violations, as well as those involved in ordering and planning them, or who are otherwise implicated must be held responsible. Sanctions must be proportionate to the seriousness of the crime committed.

103. Full compensation must be granted to the victims, or their families, in case of extrajudicial, summary or arbitrary executions. In this context, the Special Rapporteur would recommend that the necessary funds be made available by the authorities.

104. Procedures for conducting investigations into extrajudicial, summary or arbitrary killings have been laid down by the Crime Prevention and Criminal Justice Branch of the United Nations Centre for Social Development and Humanitarian Affairs in a document entitled Manual on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions (ST/CSDHA/12). The Special Rapporteur urges the Peruvian authorities to incorporate these procedures into legislation and practice, as well as in training programmes for law enforcement officials.

105. With particular regard to the case of La Cantuta, the Special Rapporteur reiterates his appeal to the competent authorities to establish a team of international forensic experts to ensure that the remains found in the graves at Cieneguilla (see above, para. 71) be examined and analysed in accordance with the highest standards of expertise.

106. The Special Rapporteur wishes to stress once again the preventive character of thorough investigations of human rights abuses. Leaflets, brochures or training courses on human rights matters may enhance the security forces' awareness of human rights in general and issues such as restrictions on the use of force in particular. However, if there is an almost absolute guarantee of not being held responsible for human rights violations, they yield only very little effect.

C. Parliamentary commissions of inquiry

107. In a law-based State, the responsibility for investigating alleged human rights violations and the punishing of those responsible lies with an independent and impartial judiciary. While parliamentary control over certain acts of the Executive may certainly be important in ensuring that the latter exercises its powers in a lawful manner, it cannot, and should not, replace a functioning judiciary.

108. In Peru, where the working of the judiciary does not guarantee a full, impartial and independent investigation of human rights abuses or the prosecution and punishment of members of the security forces responsible for them, efforts by parliamentary commissions of inquiry to clarify alleged human rights violations are particularly important. It is therefore indispensable that the investigative powers conferred on such commissions be fully ensured, in particular, with regard to their access to information and documentation in the possession of the security forces.

109. As in investigations carried out by the Public Ministry and the civilian courts, the safety of all those who participate in parliamentary inquiries - members of the commissions and supporting staff, witnesses, families of victims, etc. - must be guaranteed.

110. Evidence gathered in the course of inquiries carried out by parliamentary commissions should be investigated in an exhaustive, independent and impartial

manner by the competent courts. Particularly serious incidents, such as the disappearance of entire files or certain documents on alleged human rights violations from the offices of members of parliamentary commissions of inquiry between April and December 1992, when Congress had been closed down by the Executive, should also be investigated.

D. The death penalty

111. The Special Rapporteur is deeply concerned at the extension of the scope of capital punishment in Peru, as described in detail earlier in this report (see paras. 74-78). The procedures currently in force for trials do not provide for full guarantees of due process for those accused of terrorism and treason, which may be punishable by death.

112. In light of these grave shortcomings, and in view of the restrictions on the extension of the death penalty embodied in international human rights instruments (see above, para. 74), the Special Rapporteur reiterates his appeal to the competent Peruvian authorities not to widen in practice the scope of the application of capital punishment.

113. The Special Rapporteur calls upon the Peruvian authorities to amend anti-terrorism legislation currently in force so as to ensure full respect for the rights of those who may face the death penalty, in conformity with internationall ' recognized fair trial standards; 29/ in particular, to guarantee the full rights of detainees to challenge the lawfulness of their arrest and detention as well as to be brought promptly before a judge; the right of access to defence counsel at all stages of the trial as well as the right to benefit from sufficient time and facilities for an adequate defence; the right not to be tried in absentia; the right to full appeal procedures; the right to compensation for miscarriages of justice.

114. Particular attention must be given to the rights of persons below 18 years of age, in conformity with the Convention on the Rights of the Child which, in article 37 (a), provides that capital punishment shall not be imposed for offences committed by persons below 18 years of age. The obligation of States parties to ensure full respect for the rights of a minor deprived of his or her liberty or alleged as, accused of or recognized as having infringed the penal law are set forth in article 37 (b) and (d) and Article 40 of the Convention. Furthermore, specific safeguards for juvenile offenders are embodied in the United Nations Standard Minimum Rules for the administration of Juvenile Justice ("The Beijing Rules"). In this context, the Special Rapporteur believes that, rather than simply reduce the age of criminal responsibility and subject minors between 15 and 18 years of age to the same drastic norms as all others accused of terrorism, the Peruvian authorities should establish education and assistance programmes with the aim of preventing young people from committing acts of violence as well as facilitating the social and psychological reintegration of those who have perpetrated such acts into civilian life.

115. It should be borne in mind that, in a climate of terrorist violence, the position of both judges and defence lawyers is particularly delicate. Terrorist attacks on judges, either to intimidate them or in revenge for the convictions of defendants, are common in such situations. In a context of

widespread corruption among political leaders, attempts to bribe judges or to intimidate them through threats also occur. Lawyers who take on the defence of persons accused of terrorism are often accused by the authorities of complicity with terrorism. As a consequence, many lawyers are not willing to act on such cases. 30/ A number of such cases have been reported in Peru. The balance between measures to ensure the safety of judges and lawyers and the respect of the obligation to carry out full investigations and guarantee fair trials is not easy to find. Effective measures must be adopted to protect judges against terrorism, but also against attempts at corruption. The experience of Italy, where judges investigating acts of terrorist violence were granted special protection and where inquiries did not halt even before the implication of the Prime Minister, may serve as an example in this regard.

116. As a practical measure to avoid the danger that acting as defence counsel for a person accused of terrorism will be almost automatically regarded as being at least sympathetic to terrorist ideology and/or methods, the Special Rapporteur suggests that in such cases, a defence lawyer be appointed ex officio, according to a pre-established procedure. Such a system could be organized under the auspices of the Peruvian bar, and should not preclude the right of defendants to appoint a lawyer of their own choice.

117. Furthermore, the Special Rapporteur wishes to point out that a majority of the Peruvian people having voted in favour of the new Constitution on 31 October 1993 does not justify any breach of the Peruvian Government's obligations under international law fully to respect the right to life.

E. Civil defence groups

118. The Special Rapporteur is concerned at reports about human rights violations, including extrajudicial, summary or arbitrary executions, committed by the rondas campesinas and comités de autodefensa linked to the security forces. In this context, he wishes to stress the following:

(a) Nobody should be forced to participate in peasant self-defence groups. Acts of reprisal against those who refuse to take part in such groups, such as extrajudicial killings, death threats or any other act of harassment and intimidation by members of the security forces or ronderos, must be subjected to an independent and impartial investigation with a view to clarifying the circumstances, identifying and prosecuting those responsible and providing compensation to the victims or their families;

(b) Social and economic aspects of the rondas campesinas as traditional forms of peasant organization should be respected and fomented. Members of both rondas campesinas and comités de autodefensa should receive instruction with regard to the restrictions on the use of force and firearms, in conformity with relevant international instruments. The distribution of weapons and ammunition must take place under strict control and be restricted to a minimum, so as to avoid escalating the violence;

(c) Non-governmental human rights organization should be permitted to continue to collaborate with rondas campesinas and provide them with legal counselling and other services.

F. States of emergency

119. Even in areas declared under state of emergency, the activities of the security forces must be subjected to control by civilian authorities and, in particular, by an independent and impartial judiciary. The Special Rapporteur calls upon the Peruvian authorities to change legislation governing the maintenance of internal order in emergency zones to the effect that civilian authorities are invested with greater powers.

120. In addition, the Special Rapporteur wishes to emphasize that those carrying out investigations into allegations of human rights violations, in particular prosecutors and judges but also non-governmental human rights associations, should be granted full access to emergency zones where, at may be recalled, the majority of human rights abuses are reported to take place.

* * *

121. The issues of impunity and the extension of the scope of the death penalty described above must be viewed as the reflection of an underlying disregard for human rights on the part of the authorities. It is not enough that extrajudicial, summary or arbitrary executions or enforced or involuntary disappearances - many of which turn out to be, in reality, cases of executions - have been reduced. Responsibility will have to be established for hundreds of killings and thousands of disappearances which remain unaccounted for. More than declarations, statements or parliamentary motions, this would prove the sincerity of the commitment to human rights made by Peruvian representatives at international bodies, in meetings with the Special Rapporteur during his mission to Peru and at the World Conference on Human Rights.

122. There are too many factors that indicate the opposite: government and army officials at the highest level have repeatedly and publicly accused human rights activists of, at the least, sympathizing with the PCP-SL and MRTA terrorists. The same accusations have been made against members of political opposition parties who participated in parliamentary commissions of inquiry into human rights abuses such as the one established for the case of La Cantuta. Television stations and newspapers close to the government have also given similar accounts of human rights activities. Human rights associations have often been publicly depicted by government officials as an obstacle to development, since their reports about human rights abuses might lead to a reduction or even the ending of international financial aid to Peru.

123. In this context, it should be noted that many of the main human rights associations in Peru have clearly dissociated themselves from terrorism. This repudiation of terrorism by human rights associations is also a precondition for joining the Coordinadora Nacional de Derechos Humanos. Plans to hold regular meetings between Government officials and the Coordinadora announced by the Government in early 1993 were greeted as a positive step towards dialogue and close cooperation. However, only two meetings have been held since March 1993, and the Coordinadora has openly expressed disappointment at the lack of results. In particular, no action has been taken on seven points

agreed upon during the first meeting in March 1993 which include the revision of anti-terrorism legislation and the punishing of grave human rights violations.

124. It is also worth noting that international pressure has undoubtedly had an effect on the attitude shown by the Peruvian authorities with regard to human rights. In particular, the recent - and only - cases in which two members of the military have been sentenced for their involvement in extrajudicial, summary or arbitrary executions (see above, para. 32 (a) and (b) are said to be a consequence of international pressure and a threat to deprive the Peruvian Government of financial and development aid as well as help in its fight against drug-trafficking. However, the vast majority of cases still remain to be clarified. The way investigations and proceedings in human rights cases are being carried out, and their results, must be carefully monitored. It is feared that to declare cases "resolved" only because a sentence has been handed down may lead to the conviction of a few officers as "scapegoats", whereas the responsibility of others, particularly those in command of operations carried out by the security forces, is not investigated. The Special Rapporteur also believes that in cases where internal legal avenues have been exhausted unsatisfactorily, e.g. because the competent authorities have failed to investigate or where military courts have discontinued a case and so barred the civilian courts from dealing with the matter, the Peruvian authorities should not be seen as having fulfilled their obligation under international law to carry out exhaustive, independent and impartial inquiries into complaints of human rights abuses.

125. "Exceptional circumstances warrant exceptional measures". Thus the Minister of Justice, as well as many other government representatives, explains the numerous and far-reaching limitations on the enjoyment of human rights in Peru. Terrorist violence and the need to fight it are constantly invoked to justify these limitations.

126. However, terrorism and violence cannot serve as a justification for violations of the right to life by the security forces. While in an emergency situation the enjoyment of certain human rights may be subjected to temporary limitations, the right to life is absolute and non-derogable. There is no excuse for extrajudicial, summary or arbitrary executions, or their perpetuation through institutionalized impunity, or the flagrant lack of procedural guarantees in cases of terrorism and treason, now punishable by death.

127. In this context, the Special Rapporteur wishes to refer to reports in the international press concerning a recent offer to enter into negotiations with the PCP-SL, extended to the Government by Abimael Guzmán, who is currently serving his sentence of life imprisonment. This may be regarded, with all due caution, as a sign of hope for a reduction of violence. It may also lead to a reconciliation process, in which well-respected national or, if accepted by all those involved, international institutions could serve as mediators.

128. It should be recalled, however, that the armed insurgency and counter-subversive activities are not the only causes of human rights violations in Peru. Numerous observers have denounced a deeply rooted structural violence, generated by social and economic inequalities between

different components of Peruvian society. A highly uneven distribution of wealth, high unemployment, illiteracy and discrimination are just some of these factors. However, it is in the context of the 13 years of armed conflict between armed opposition groups and government forces that violence has become the predominant form of political expression and conflict resolution.

129. In a keynote address to the Council of Information and Communication for International Development on 27 April 1993 in Rome, H.E. Mr. Juan Somavia, President of the Economic and Social Council, has stated the following:

> "What were the sources of insecurity in our societies? How did people perceive insecurity? The first answer to that - I am talking about Latin America, where this concept was developed - was poverty. Poverty brought insecurity for the people that lived in poverty, and insecurity for the people who did not live in poverty, because they expected the poor to get organized and to change the system, through more or less violent means.
>
> "Other sources of insecurity were unemployment, drugs, violence, and threats to the environment. So that led us to the conclusion that a concept of security exclusively linked to the State is not functional, because it does not respond to the way people perceive the problems of security.
>
> "The first change, therefore, is that we need to put into the centre of things what we have called human security, and recognize that the old concept of security is no longer useful. It means, in brief, that you can have a very secure State, full of insecure people.
>
> "If we want to have real security, people have to be secure, not only states."

Notes

1/ The Special Rapporteur has received information according to which the new Constitution, approved by the Peruvian people on 31 October 1993, contains a similar provision.

2/ The security forces base their claim on Supreme Decree No. 171-90-PCM of 23 December 1990.

3/ The Special Rapporteur was informed that only in one case, in 1984, did the Supreme Court decide that a military officer should be tried before a civilian court. However, the individual, a naval officer, "disappeared" in what was described as a "self-abduction" (autosecuestro) and he never appeared before a judge.

4/ Several journalists and non-governmental organizations have stated that this is a reference to three Japanese engineers killed in Huaral in July 1991.

5/ In its general comments on article 6 of the Covenant, which sets forth a number of limitations on the imposition of capital punishment, the Human Rights Committee has stated that international human rights instruments governing the application of the death penalty must be interpreted in the most restrictive way. According to the Committee, all measures of abolition should be considered as progress in the enjoyment of the right to life (see A/37/40, annex V, comment 6(16)). This tendency towards a progressive restriction and eventual abolition of the death penalty is also reflected in the Safeguards guaranteeing protection of the rights of those facing the death penalty (Economic and Social Council resolution 1984/50 of 25 May 1984) and in several resolutions by the General Assembly. Any legal or constitutional provision which provides for an extension of the range of capital offences contradicts these precepts.

6/ D.L. Nos. 25.475, 25.659, 25.880.

7/ D.L. No. 25.659.

8/ D.L. No. 25.564. Under article 20(2) of the Criminal Code, 18 years is the minimum age for criminal responsibility.

9/ D.L. No. 25.475.

10/ These new powers derogate from the rules applied for other offences. Thus, according to article 140 of the Code of Criminal Procedure, incommunicado detention may not exceed 10 days and does not preclude private meetings between the detainee and his lawyer. The judge may revoke the decision to hold someone in incommunicado detention if it is found to be unjustified.

11/ D.L. No. 25.824. Under article 137 of the Code of Criminal Procedure, the maximum pre-trial detention period in terrorism-related cases is 24 months.

12/ D.L. No. 25.475, 25.744.

13/ D.L. No. 25.475, 25.744.

14/ D.L. No. 25.475. See also note No. 10.

15/ D.L. No. 25.475.

16/ Under the Code of Criminal Procedure, in only one specific case (recurso de revisión, set out in art. 363), is there a time-limit for a decision on appeal.

17/ D.L. No. 25.475.

18/ D.L. No. 25.728. Article 308 of the Code of Criminal Procedure stipulates that persons who are not present at trial may be acquitted but not convicted; in case of a judgement other than acquittal, proceedings are halted until the accused appears before the court. Once the accused is detained or they present themselves voluntarily, proceedings are to follow the rules established by the Code of Criminal Procedure.

19/ See note No. 16.

20/ Military jurisdiction in cases where the charge is treason has been established by D.L. No. 25.659. A death sentence imposed on a minor would violate article 37(a) of the Convention on the Rights of the Child, according to which capital punishment shall not be imposed for offences committed by persons below 18 years of age. Peru ratified the Convention on the Rights of the Child on 4 September 1990.

21/ D.L. No. 740.

22/ However, the Special Rapporteur has received reports according to which the undertaking by peasants of explicit operations for the security services, in particular, the army, dates back to early 1983 and coincides with the establishment of emergency zones under political-military command. There are indications that the first documented massacre involving extrajudicial executions, the killing of eight journalists by peasants in Uchuraccay in early 1983, was carried out by peasants on the direct orders of the army. As in most other cases of alleged extrajudicial, summary or arbitrary executions, those responsible have never been brought to justice.

23/ D.L. No. 741.

24/ Decreto Supremo 077/DE-92.

25/ Article 231. According to information received by the Special Rapporteur, the new Constitution approved on 31 October 1993 includes similar provisions.

26/ Law No. 24.150 of 6 June 1985.

27/ In this context, it should be recalled that the decisions of the Honour Tribunal instituted in early 1993 to, inter alia, examine all appointments of judges and prosecutors since 5 April 1992 are subject to approval by a plenary session of Congress.

28/ This obligation is embodied in the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions (Economic and Social Council resolution 1989/65 of 24 May 1989). In particular, principles 9 to 19 oblige Governments to conduct a thorough, prompt and impartial investigation of all suspected cases of extra-legal, arbitrary and summary executions, to make public the results of these inquiries and to ensure that persons identified as having participated in such executions in any territory under their jurisdiction are brought to justice. The Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, also provide that Governments shall ensure that arbitrary or abusive use of force and firearms by law enforcement officials is punished as a criminal offence under national law (principle 7).

29/ These standards for a fair trial are set forth in articles 9 and 14 of the International Covenant on Civil and Political Rights, the Standard Minimum Rules for the Treatment of Prisoners, the Body of Principles for the Protection of all Persons under Any Form of Detention or Imprisonment, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Basic Principles on the Role of Lawyers and the Guidelines on the Role of Prosecutors.

30/ In Peru, the fact that, under the present anti-terrorism legislation, a lawyer can defend only one person accused of terrorism at any one time greatly increases potential difficulties for defendants in finding legal counsel.